

Ten years R2P - what doesn't kill a norm only makes it stronger? Contestation, application and institutionalization of international atrocity prevention and response

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Ten Years R2P – What Doesn't Kill a Norm Only Makes It Stronger?

Contestation, Application and Institutionalization
of International Atrocity Prevention and Response

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Summary

It has been ten years since the General Assembly of the United Nations unanimously acknowledged a Responsibility to Protect (R2P), the shared responsibility of all nations and the international community to protect all people. Through this, the controversial debate on humanitarian intervention was to be replaced by a consensus that the protection of the populace from extreme atrocities is an integral component of and prerequisite for national sovereignty. But is the R2P actually being acknowledged and how has it developed in the ten years since its adoption? This PRIF Report shows how the disagreements among the nations regarding the significance and application of the set of moral norms contained in the R2P is precisely what has kept it alive and evolving: The components of prevention and international support have achieved broad acceptance, whereas at the same time, the aspect of international intervention in the case of atrocities continues to be highly controversial. However, the strong disagreements had the constructive effect of setting in motion reform and regional implementation initiatives, without which the R2P would probably be experiencing less acceptance today.

The R2P is a set of norms that specify a number of behavioral expectations from states and international organizations. First, the responsibility norm, i.e., the expectation that individual states will protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing (first pillar); second, the support norm, i.e., the expectation that, upon request, the international community will support individual states in fulfilling their responsibilities (second pillar); third, the reaction norm, i.e., the expectation that, in the event of the failure or unwillingness of a government, the international community will react swiftly and decisively (third pillar). As a resolution of the General Assembly, the R2P does not create any new norms in international law, but is a formulation of moral norms instead.

In order to analyze the degree of acceptance and level of controversy in connection with these norms, the present report examines the debate on R2P, its application in crisis situations and signs of its institutionalization. It is becoming apparent that, as a whole, the set of norms centering on R2P is gaining moderate acceptance in the community of states. The R2P receives increasing acknowledgment in global policy debates within the community of states, but with many states having reservations. It is true that systematic marketing of R2P by non-governmental organizations, dedicated individuals, diplomats from various states and the Secretariat of the United Nations have made possible the relatively rapid development of the R2P from an idea to a set of norms becoming more and more firmly embedded in the UN context. In media and PR work, at events held by R2P supporters, as well as in many scholarly publications, however, the level of support for R2P in member states is sometimes deliberately exaggerated in order to increase social pressure on the states and the Security Council to observe R2P. Many states in fact have misgivings about the norm for reacting to mass atrocities as set out by R2P and are drawing attention to possible misuse by great powers. How prevention of and reactions to specific atrocities are to be implemented is highly contentious. The limitation of national sovereignty is still a hotly disputed topic for states from the global South. Especially in cases in which it came to

an international intervention without the agreement of the local government, many states are expressing mistrust of the motives of the intervening states. Changes of regime imposed by force, such as in Libya in 2011, are not achieving any acceptance. The Security Council is applying the R2P selectively, even though confirmatory references to the responsibility to protect are to be found more and more frequently in Security Council resolutions – already 38 times since 2005. But most of these references are not based on the entire set of norms included in R2P, only on the responsibility of the individual state involved. This is connected to the controversial nature of the third pillar, i.e., the question of the appropriate response to atrocities. Developing and emerging nations prefer peaceful forms of reaction and see dialogue as the best form of conflict resolution, whereas some Western nations frequently insist on giving a UN Peacekeeping operation responsibility for protecting the civil populace or even wish to use force themselves, as in Libya or Ivory Coast. In extreme cases, however, according to the demands of many developing and emerging nations, it is precisely the implementation of violent measures authorized by the Security Council which needs to be more closely supervised in order to avoid disproportionate intervention in the internal affairs of the target nation. Despite these conflicts, the institutionalization of R2P is progressing and the disagreements are being kept within limits. In the United Nations the R2P is institutionally established in the form of the offices of two special advisers for the prevention of genocide and the R2P, in the annual interactive dialogue of the General Assembly on the R2P, and through the Human Rights Up Front action plan. The level of regional and national anchoring of the norm is very uneven, both qualitatively and quantitatively. But institutionalization is also progressing here through the creation of the R2P or genocide prevention focal points, as well as in the framework of intergovernmental preventive networks such as the Latin American Network for Genocide and Mass Atrocity Prevention or the Global Action against Mass Atrocity Crimes (GAAMAC).

In this analysis it will become apparent that the controversial aspects of the R2P are mainly focused on questions of appropriate application and implementation. The general validity of the responsibilities it contains is not openly questioned: Most nations have acknowledged that the protection of their population from genocide, war crimes, crimes against humanity and ethnic cleansing is a prerequisite for the legitimate exercise of sovereignty. There is also basic agreement that in extreme cases the international community has a responsibility to intervene. However, because the thresholds for exercising this responsibility are interpreted differently, the reactive component of the R2P is hardly applied, although this third pillar of the R2P is not restricted to the application of armed force, which, according to the R2P, can only be considered in extreme cases and where there are good prospects of success. Both the imposition of sanctions and action through the International Criminal Court are also highly controversial. This can be seen, for instance, in the example of the civil war in Syria. However, as long as the intense disputes over implementation of the norm lead to initiatives for its further development, there does not seem to be any danger of R2P deteriorating to a meaningless level. The disagreement regarding NATO exceeding its mandate in the 2011 Libya intervention led Brazil to develop the idea of “responsibility while protecting” (RwP) and China to develop the “responsible protection” concept. Both call for greater transparency and accountability of those intervening based on authorization from the Security Council. Given that the Security

Council is deadlocked over the Syria conflict, various initiatives for limiting the veto power of the five permanent members of the Security Council have gained a new lease on life. Finally, in the debate on the appropriate reaction to serious atrocities, a few smaller countries and NGOs reacted to the intransigent fronts with new initiatives on prevention such as the networks mentioned above. However, the norm could encounter difficulty because a) the reactive component is seldom applied and b) a few of the initiatives mentioned are now making no or few references to the concept of R2P and are concentrating instead on the prevention of genocide and atrocities. If the concept of R2P should, as a result, vanish from the discourse, this would weaken the norm: Prevention is a key focus of R2P. However, the norm also encompasses the equally important aspect of a peaceful or, if required, coercive reaction to atrocities.

Against this background, at the international level several avenues open up for further development of the responsibility to protect norm. In the area of early warning and the concrete implementation of the prevention of atrocities, both the United Nations and the cooperating civil society actors should continue to be supported. At the same time, primarily Western states most strongly advocating the protection regime should set a good example and at both the national and international level institutionalize mechanisms aimed at reducing the danger of atrocities. In addition, the misgivings of many states of the South should be dealt with through institutional reforms. The “responsibility while protecting” idea proposed by Brazil offers a good starting point and could be translated into a proposal for reform of the working methods of the Security Council. In every sense, dialogue must be sought with skeptics who frequently regard the R2P agenda as an imposition of Western values on them. Consequently, in its marketing of the norm, civil society should also take greater consideration of the fears of the skeptics, instead of giving the impression that R2P is already firmly anchored internationally, regardless of what skeptics think about it. After all, it should not be forgotten that the majority of nations have never stated their position on R2P. Thus, as a final point, R2P should be officially added to the agenda of the General Assembly in order to initiate a dialogue between those in favor and those skeptical of the responsibility to protect. The goal of these efforts must be to establish an international consensus on the entire set of norms and thus also on the third pillar of R2P. To avoid discussing the issue of how to respond, including the use of military means, would contradict one of the core principles of the R2P, the right of the victims of the most serious violations of human rights to protection from serious atrocities.

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1. Introduction

Almost ten years have passed since representatives of all states, including about 150 heads of state and of government, unanimously acknowledged in September 2005 that they have a responsibility to protect their populations. Every state must protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing. If a state fails to do so, the international community should be ready to react through the UN Security Council.

How has the Responsibility to Protect (R2P) developed in the ten years since it was adopted?¹ Do the states support it? A review of news reports suggests that it has had an only limited effect so far. The Security Council does not seem to be capable of agreeing on a joint procedure in Syria, although people are being massacred there by their own government and Islamic terrorists. In the Central African Republic (CAR), South Sudan, Libya, Darfur, Yemen and the Democratic Republic of the Congo, noncombatants are being attacked by parties to the conflict, sometimes deliberately. In Myanmar the government is being accused of implementing a policy of ethnic cleansing against the minority Muslim Rohingya people. The Democratic People's Republic of Korea is accused of serious crimes against humanity. And the international community is only demonstrating a willingness to react to such events in isolated cases. In February 2015, Amnesty International condemned the international reaction to serious atrocities as "shameful and ineffective" (Amnesty International 2015). However, on paper, the community of states is very active; at least as far as protection of civilians using armed forces is concerned. Blue Helmet soldiers in South Sudan are attempting to protect internally displaced persons on their bases from attacks by the parties to the conflict. African, French and other European soldiers have the task of protecting people in CAR from the threat of genocide. In 2011, regardless of the subsequent criticism of the implementation of the mandate, the Security Council authorized international intervention in the Libyan civil war in order to protect the civilian population from attacks by the Gaddafi regime. At almost the same time, French troops intervened in Ivory Coast to support the Blue Helmets there in protecting the population from the effects of the power struggle between the outgoing and newly elected presidents. Simultaneously, for several years, initiatives have increasingly been developing for the prevention of such atrocities by means of early warning and the creation of problem awareness among national decision makers.

In Summer 2015, the Secretariat of the United Nations used the approaching tenth anniversary of the adoption of the R2P – also the 70th anniversary of the United Nations (UN) – as an opportunity to take stock of the advancement of R2P (Ban 2015). Ban Ki-moon articulated six core priorities to inform atrocity prevention and response in the next ten years (Ban 2015: 15–19): The UN, regional organizations and states should demonstrate more political commitment, provide actual protection to communities at risk and pursue atrocity prevention and response as national priorities. Second, additional resources should

1 This report was prepared as part of the project "Conditions for successful governance in the conflict between humanitarianism and sovereignty" supported by the German Research Foundation. I am grateful to Caroline Fehl, Matthias Dembinski, Bernhard Moltmann, Max Lesch and the Research Council of PRIF for helpful comments and critique.

be invested in atrocity prevention, early warning, conflict prevention, peacebuilding, protection of civilians, empowerment of women, and criminal justice. Third, the Security Council should ensure timely and decisive responses in cases of mass atrocities. Fourth, repeated cycles of violence should be interrupted by means of peacebuilding, good governance, transitional justice and societal reconciliation. Fifth, regional organizations should play a vital role in implementing R2P. Sixth, peer networks between state officials, UN staff and NGOs should be strengthened. States should develop national R2P strategies. During an informal debate on the report in the UN General Assembly in September 2015, many states reaffirmed the relevance of and the progress made in advancing R2P as a principle guiding international atrocity prevention and response policies (GCR2P 2015b). However, the increasing but still low degree of institutionalization of R2P and atrocity prevention on the regional and national level and the fact that the UN Security Council is increasingly deadlocked due to Great Power rivalries are, among other things, still challenges to R2P as a norm set.

This report sheds light on all these aspects of R2P and provides an overview of the range of relevant actors and initiatives working internationally on R2P. However, the overall focus of this report is on the debate on the responsibility to protect and its components in the context of the UN, and especially on the recognition of and the disagreements over it among states. After all, the protection of people in situations of crisis will only be improved if the underlying principles of the R2P are accepted by the international community.² The central thesis of this report is that the R2P has been kept alive and evolving by precisely the disagreements among the states regarding the norms entailed and their application: The norms of prevention and international support are being accorded more and more widespread acceptance. The norm of responsibility for an international response to atrocities remains in dispute. But these disagreements have themselves set in motion reform and regional atrocity prevention initiatives, without which the R2P would probably be enjoying less acceptance today.³

The next section focuses on criteria for analyzing norm acceptance and dispute, followed by analysis of R2P's development, the discourse on R2P, its application in crisis situations and its institutionalization at regional and international levels. In closing, possibilities for further development of the R2P norm set will be presented.

2 The effects and conditions for the success of military humanitarian interventions are the subject of a research project currently being conducted by the PRIF (Gromes/Dembinski 2013). These points will only be touched upon briefly in this report.

3 This report makes use of data from confidential interviews carried out with diplomats and officials of the UN Secretariat and NGOs in New York between August and October 2014. I wish to thank the German Academic Exchange Service for supporting the research visit and the Ralph Bunche Institute for International Studies in New York for their hospitality.

2. Norm acceptance and controversy

How can we measure the influence of a norm? Considering its voluntary adoption by the addressees and examining cases when implementation was enforced when the norm was violated, for example by imposing sanctions or using force, is an obvious way to gauge its influence. But focusing only on the effects of a norm and sanctions mechanisms for inducing compliance does not go far enough. Norms in international relations specify general expectations of the behavior of the actors involved or, more precisely, “a standard of appropriate behavior for actors with a given identity” (Finnemore/Sikkink 1998: 891). They do not necessarily have to be but may be of a legal nature and often lack automatic sanctions mechanisms as we know them at the national level: If a serious crime is committed in Germany, the police services *are required* to make inquiries and commence an investigation. If a suspect is identified, a court *is required* to hand down a verdict and, in case of a conviction, to impose a sentence. It is different at the international level: Even in the case of clear breaches of international law, decisions on pursuing the matter are mostly political, not legal. Although, with the International Criminal Court (ICC), an independent body for investigating and punishing the most serious crimes exists, not all states accept its jurisdiction (see: Fehl 2014). In addition, the ICC cannot directly order protection against violence of the people in dire circumstances or arrest those responsible. The Security Council of the UN continues to be the highest ranking decision-making body on matters of global security. But this consists of representatives of states, not independent lawyers. Diplomats owe allegiance, above all, to the interests of their particular governments and less to maintaining the integrity of international law. Is everything thus only power politics? No. Research shows: Norms influence state behavior. They contain a moral obligation about what appropriate behavior by a state has to look like – at least for as long as they are accepted by a critical mass of states. The fact that violating a norm does not necessarily question its validity follows from this. Norms derive their legitimacy from their recognition by states. That a norm continues to be valid despite the rules being broken can be seen from the justification of breaking the rules by the norm-breaking party and the criticism of other states (Deitelhoff/Zimmermann 2013: 4; Sandholtz 2008: 14–15).

Consequently, the first key indicator of – national and international – acceptance of a norm is its being referred to in political debate (Cortell/Davis 2000: 70–71). If many and also important actors make reference to a norm in a positive manner, it acquires a certain validity. In addition, the significance of a norm can be seen in its use as a rule for political behavior in a state, as well as in its being embedded in institutions, laws and procedures (Cortell/Davis 2000: 70–71). For the present analysis, this means: A norm counts as accepted, if it a) is salient in the discourse, b) is also specifically applied – which, at the international level, would mean that reference is made to the norm in dealing with conflicts, e.g. in the Security Council – and c) the norm is institutionally embedded in international organizations.

Figure 1: Indicators of norm acceptance

	Degree of acceptance of a norm			
	High	Moderate	Low	None
Indicators				
Salience of the norm in the discourse	Affirmative references	Acceptance, with exceptions, special conditions and reservations	Partial acceptance, but also rejection under reference to other norms	Rejection or only used to legitimize other goals. No criticism of violations.
Application of the norm	Consistent application	Application in individual cases	None	None
Change in institutions	Embedded within institutions	Beginning to be embedded within institutions	No institutional changes	No institutional changes

But at the same time the development of international systems of regulation is marked by ongoing contestation of norms and their application (Sandholtz 2009: 10–18; Wiener 2008). Disagreements on the correct interpretation of a norm and the behavioral expectations arising from it should not be ignored. The various actors make use of their own specific cultural background knowledge – domestic and regional social norms and practices, values and notions of justice – to assess the legitimacy of a norm (Acharya 2004; Wiener 2008; Müller 2013). Because controversy is a discursive phenomenon, disagreement about a norm can mainly be investigated through debates on the norm and its application.

Contestation takes on different forms (see Wiener 2008; Deitelhoff/Zimmermann 2013): If the *validity of a norm* is disputed, it can be anticipated that the norm will be questioned by a critical mass of states. A third of the international community, including influential actors such as great powers, emerging powers or major regional organizations, is regarded as defining a critical mass (Finnemore/Sikkink 1998: 901–902; Deitelhoff/Zimmermann 2013: 7). If the *significance of a norm* or its interpretation is disputed, it can be expected that various states, including influential actors, will propose differing interpretations of its contents. On the other hand, if there is controversy on the *applicability and range of a norm*, there will be disagreement on whether it can be applied in a specific situation and whether there has been any violation of the rules at all. Finally, the *implementation of a norm* can lead to disagreement. This occurs when differing understandings of the “appropriate” application of a norm in a particular situation exist, for example the extent to which the means being employed to sanction a violation are appropriate.

The last two kinds of contestation can lead to more clarity in the specification of a norm or of the instruments employed to see that it is adhered to, and can thus even strengthen the norm (Badescu/Weiss 2010; Deitelhoff/Zimmermann 2013). Disputes about the significance of a norm can also lead to its being strengthened if a shared interpretation of the norm develops among the actors as a result (Wiener 2008). However, the stability of a norm “is eroding if non-compliance is no longer described as non-compliance and becomes widespread”; this is most likely “when contestation radicalizes by (1) turning from application to validity itself (questioning the ‘righteousness’ of the obligatory claims as such) and by (2) becoming constant (allowing no more temporal stabilizations of the norm)” (Deitelhoff/Zimmermann 2013: 5).

In the following section I will describe the process of R2P’s evolution, thereby tracing how later conflicts loomed from the very beginning. Following this, using the indicators of

the acceptance and contestation regarding the norms presented here as a guideline, I investigate the complex development of R2P and its components.

3. The emergence of R2P

The Responsibility to Protect is part of a global, informal protection regime, which began to develop in the early 1990s. Emerging from the lessons and failures of the Blue Helmet missions in Somalia, Bosnia and Rwanda, the practice of charging the peacekeeping missions of the United Nations with protecting civilians in armed conflicts had already begun to establish itself by 1999 (see for example: Peou 2002).⁴ At the same time, the controversy over humanitarian intervention and the NATO intervention in the Kosovo conflict in 1999, which did not have a UN mandate, led to the emergence of the set of norms of the Responsibility to Protect (R2P) (on the emergence of the concept, see: Brock 2013; Loges 2013). At that time, the debate was marked by the tension between the rights of states to sovereignty and non-interference in their internal affairs on the one hand and humanitarian international law and human rights on the other: Can people also be protected in internal conflicts and, if necessary, even against the will of the government in power? What happens when the Security Council cannot agree on invoking the collective security mechanism? For many developing and emerging nations, the non-intervention norm is a moral imperative in the debate, not just a legal impediment which the West can ignore whenever it deems this suitable (Thakur 2006: 279). Against the background of colonialism, they see their right to self-determination and equality as threatened by demands for the legal and moral admissibility of humanitarian interventions (Thakur 2006: 266).

Following the controversial Kosovo intervention by NATO and the sovereignty debate introduced by UN Secretary-General Kofi Annan, Canada formed a group of experts. This International Commission on Intervention and State Sovereignty (ICISS) was charged with unifying the varying perspectives on sovereignty and the protection of human rights. In the years 2000 and 2001, they worked out the concept of the Responsibility to Protect. The closing report of the ICISS, which had the same name, identified three interlinked national and international areas of responsibility in connection with the protection of the civilian population from atrocities – prevention, reaction and reconstruction (ICISS 2001: XI). It formulated a duty of the international community to intervene in cases of mass murder if a state cannot protect its own civilian population or refuses to do so. The ICISS report also specified a set of criteria which should guide decision-making on the use of military force in emergencies. In this way, the debate was to be moved away from a right to humanitarian intervention and more strongly toward a duty to prevent atrocities arising from the right to

4 The non-intervention requirement is the starting point for the UN's collective security system. However, according to Article 39 of the UN Charter, if the Security Council identifies a threat to international peace or security, based on Chapter VII of the Charter it can impose preventive measures, economic pressure or even the use of military means. Whereas, earlier, Peacekeeping operations often operated under Chapter VI and, consequently, were not permitted to interfere in internal affairs, today many UN missions operate under Chapter VII mandates: Only with such a mandate can they carry out their supervisory function and protect civilians from violence.

exercise sovereign power. Sovereignty rights would not be restricted, but rather, the states would be encouraged to strengthen their sovereignty by fulfilling their responsibility to protect their civilian population.⁵

However, the war against terror following September 11, 2001, as well as the Iraq War of 2003, which was against international law, had negative consequences for the reception of the ICISS Report among those who saw liberal and humanitarian norms as a backdoor for great-power interventionism. Kofi Annan used this deadlocked situation for a reform initiative. A summit of heads of state and government on the implementation of the 2000 Millennium Development Goals had already been scheduled to take place in 2005. Annan added UN reform to the agenda of this summit and thus also added peace and security topics. The High-level Panel on Threats, Challenges and Change to threats to international security he established in September 2003 supported “the emerging norm of a collective international responsibility to protect” (High-level Panel on Threats, Challenges and Change 2004: para. 202).⁶ Kofi Annan included almost all recommendations made by the panel in his report “In larger freedom: towards development, security and human rights for all” published in March 2005 in preparation for the world summit (Annan 2005).

Finally, after intensive debate (see Hofmann/Wisotzki 2014; Bellamy 2009: 66–91), the R2P became part of the summit outcome document (Resolution 60/1: paras. 138–40). Many states defended their right to equal sovereignty under the banner of the norm of non-interference and reported misgivings over potential misuse of R2P. The compromise achieved leaves responsibility largely in the hands of the individual state, limits application of R2P to potential cases of genocide, war crimes, ethnic cleansing and crimes against humanity, and in extreme cases requires a decision by the Security Council approving international interference.

With the resolution adopting the R2P, the informal humanitarian protection regime was specified by the norms which were later labeled the three pillars of the R2P by UN General Secretary Ban Ki-moon (Ban 2009). As a resolution of the General Assembly, it did not involve new international law norms, but rather a formulation of moral norms. Thus the R2P is a set of behavioral expectations directed at states. It includes, firstly, the norm of responsibility, the expectation that the individual state will protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing (first pillar). This can be regarded as a norm in the sense of international law: an almost universally acknowledged basis in international law is provided by the Genocide Convention, the Geneva Conventions of 1949 and their additional protocols, the Torture Convention, the Convention on the Elimination of all Forms of Racial Discrimination, the Refugees Convention, the Rome Statute of the International Criminal Court and the Arms Trade Treaty. Secondly, R2P contains the support norm, an expectation that, when requested to do so, the international

5 At the same time as the ICISS process, a broader development was already taking hold in Africa: In view of the serious atrocities, the African Union (AU) had already incorporated in its constitutive act, adopted in 2000, a right of the AU to intervene (Dembinski/Reinold 2011: 8–10).

6 One of the members of the High-level Panel, Gareth Evans, was an ICISS member. Canada also attempted – ultimately successfully – to persuade the entire group of experts to include the R2P in its recommendations (Bellamy 2009: 75f).

community will support individual states in fulfilling their responsibility (second pillar). Thirdly, it involves the response norm, the expectation that, in cases of failure or unwillingness of a government to do so, the international community will react quickly and decisively (third pillar). In addition, with the support of the Special Advisor on Prevention of Genocide, the early warning function of the UN is recognized.

4. Acceptance and controversy: UN debates on R2P

In January 2006 in Resolution 1653 on Burundi and the Democratic Republic of the Congo, for the first time, the Security Council referred to the primary responsibility of governments in the region to protect their populations. Confirmation of all the components of R2P in the 2005 World Summit resolution proved to be more difficult. A British draft resolution on the protection of civilians in armed conflicts had already been discussed in a public session in December 2005. However, Russia, China and Algeria had rejected the adoption of the concept of “collective responsibility” (Lederer 2006) and, together with Algeria, the Philippines and Brazil, argued that the world summit document only required further discussion of the R2P (Bellamy 2010: 145). After the non-permanent membership of Algeria and Brazil expired at the end of 2005, Great Britain and its supporters succeeded in convincing Russia and China to confirm the R2P in April 2006 in Resolution 1674 on the protection of civilians in armed conflicts (Lederer 2006). In the following years, the Security Council only referred to R2P once in a concrete case of conflict: Resolution 1706 (2006) on the situation in Darfur referred to the responsibility of the Sudan government to protect its population. There was no further reference to the R2P until the thematic Resolution 1894 in 2009 (see also Section 5.3).

Intervening years were marked by conflicts on the breadth of the responsibility to protect and its application to specific cases. After Darfur, the first case discussed with reference to the R2P was the conflict over the result of the elections in Kenya on December 27, 2007. Unrest, looting, rape and violent clashes between various political groups and security forces quickly acquired an ethnic dimension, because the government’s supporters and the main opposition group came from different ethnic groups (Jacobs 2011: 5–7). Approximately 1,500 people died and hundreds of thousands fled. After several attempts at mediation by African states had failed, a mediation mission of the African Union led by Kofi Annan attempted to find a resolution. With international assistance, success was achieved in forming a national unity government and ending the crisis (Jacobs 2011: 7). Although no direct reference was made to the R2P at that time, the crisis was subsequently classified as a case of successfully applying it by Kofi Annan and advocates of the R2P (Annan 2009).

Two disputes, which contributed to clarifying the scope of application for the R2P, were initiated by France and Russia in 2008. Despite massive devastation as a result of Cyclone Nargis in May 2008, Myanmar’s government initially refused to give international humanitarian relief organizations access to the affected areas. France demanded that, in the sense of R2P, the international community had an obligation to rush to the aid of needy people in Myanmar, even against the will of the governing military junta. Ultimately, the regional organization ASEAN was able to convince the military junta to open its borders for

humanitarian aid. Although France's threat of intervention added weight to the efforts of ASEAN, the French interpretation of the area of application was rejected by most states, even strong R2P advocates. Such an extension threatened to cast doubt on the compromise of 2005 (Badescu/Weiss 2010: 9). In the summer of 2008, Russia tried to justify the war against Georgia based on R2P: Following a Georgian offensive against secessionist rebels in South Ossetia at the beginning of August 2008, Russia reacted by sending soldiers into the region to stop the attacks by the Georgian army. The Russian government argued that it had the right and was required by its constitution to prevent genocide against the South Ossetian secessionists of Russian origin and to "fulfill the responsibility to protect" (MFA Russia 2008). This reference to the R2P found no support from other states – especially as the main rationale for Russia to exercise its right to self-defense took the form of protecting Russians and citizens of Russian origin (Badescu/Weiss 2010: 11).

Kenya provided supporters of R2P with an example of a reaction to atrocities that lay below the threshold for the application of force. In Myanmar and South Ossetia, there were conflicting views on what the scope of application meant, with the result that the majority of those who spoke out agreed that these cases did not fall under the set of R2P norms. These disputes over its applicability made the scope of application for the R2P more specific: It can only be applied in cases of the four kinds of crime: genocide, crimes against humanity, war crimes and ethnic cleansing.

4.1 Debates in the General Assembly on R2P

Against this background, on the basis of discussions with member states, Edward Luck, Special Advisor to the Secretary-General on the Responsibility to Protect (see Section 6.1), developed the three pillars of the R2P in the first report of the Secretary-General to the General Assembly regarding implementation of R2P: Responsibility of the individual state, international support and the rapid and decisive reaction of the international community (Ban 2009). This division into different components was intended to clarify Ban Ki-moon's "narrow but deep" approach: All available instruments should be employed for both prevention and response, whereas the scope of application should remain narrowly focused: By applying R2P, it should now be possible to react to the four crimes, but not to other serious crises such as natural catastrophes (Bellamy 2012: 18).

The report was first discussed on July 23, 2009 in an informal interactive dialogue with experts, before the General Assembly officially discussed the topic on the following days. The President of the UN General Assembly, Miguel D'Escoto from Nicaragua, attempted to prevent a resolution on the R2P. He presented a concept paper disputing the legitimacy of the summit resolution and presented R2P in the context of European colonialism (President of the 63rd General Assembly 2009). He concluded that the collective security arrangement of the UN was not an instrument for achieving human rights, but for maintaining international security:

Colonialism and interventionism used responsibility to protect arguments. National Sovereignty in developing countries is a necessary condition for stable access to political, social and economic rights and it took enormous sacrifices to recover this sovereignty and ensure these rights for their populations. [...] The concept of responsibility to protect is a sovereign's obligation and, if it is exercised by an external agency, sovereignty passes from the people of the

target country to it [the external agency]. The people to be protected are transformed from bearers of rights to wards of this agency (President of the 63rd General Assembly 2009).

Only Bolivia, Ecuador, Cuba, Nicaragua, North Korea, Malaysia, Sudan and Venezuela openly supported this point of view and expressed their disapproval of the resolution adopted by the World Summit. Others including the Non-Aligned Movement (NAM), and especially Brazil, China, Iran and Pakistan, were skeptical and called for further discussion of the compromise reached on R2P in 2005.

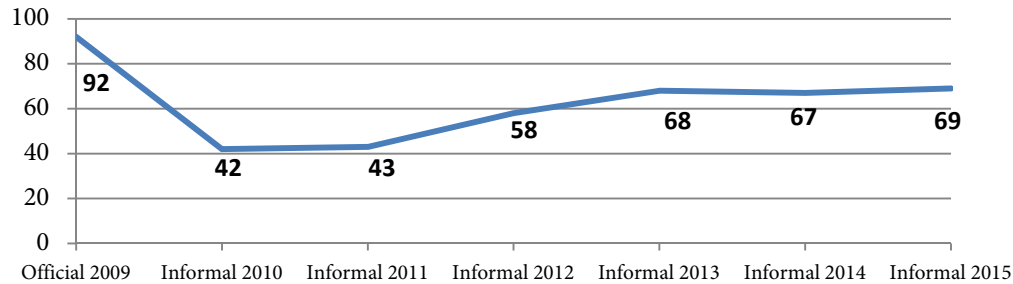
In general, although agreement with the report of the Secretary-General was expressed in the debate, it became apparent that support for the set of norms as a whole did not run particularly deep. Precisely the third pillar of the R2P – the international reaction to atrocities – was met with considerable reservation among UN member states: This might serve as a formula for justifying intervention without a UN mandate and potentially serve the goal of forced regime change, while thresholds for the application of the R2P were cited as being unclear (see also GCR2P 2009 in the following section). Double standards and a lack of consistency in the reactions of the Security Council were criticized. Its constitution and working methods were seen by some states as the real cause for its inability to act in the face of atrocities. In addition, a few states feared that the R2P would strengthen the role of the Security Council in relation to the General Assembly, i.e., the Security Council would receive additional authority to supervise the internal affairs of member states. The crimes being addressed by R2P were said to be rooted in underdevelopment and poverty, and the UN was encouraged to focus its resources on combating these root causes of conflicts. However, many states supported Ban Ki-moon's call for the permanent members to refrain from using their veto right in connection with mass crimes.

After D'Escoto closed the debate without any decision, a group of states under the leadership of Guatemala began negotiations on a resolution (Serrano 2011: 435). Western states initially feared that such a project could be hijacked by skeptics to block implementation of R2P. Interestingly, in the search for supporters, Guatemala found an important ally in India, which had expressed strong criticism of R2P in 2005. According to a statement by a diplomat who was involved, the group led by Guatemala initially lobbied for a resolution among developing nations in order to increase the credibility of the initiative, and accepted Western support only after broad support in the South became apparent. The draft resolution, which was ultimately tabled by 67 states, contained no content-related statement on the R2P, merely acknowledgment of the report of the Secretary-General and the intention of the General Assembly to continue to work on the R2P. The General Assembly adopted it unanimously on September 14, 2009 as Resolution 63/308.

Every year since 2009, discussion on R2P takes place in "informal interactive dialogues" of the General Assembly. Such dialogue allows member states to discuss the yearly reports of the Secretary-General on the implementation of the responsibility to protect. These reports have covered the topics of early warning (Ban 2010), the role of regional organizations in implementing the responsibility to protect (Ban 2011), the third pillar (Ban 2012b), responsibility of individual states (Ban 2013a) and possibilities for supporting the state in meeting its responsibility (Ban 2014). In 2015, the discussion focussed on stock taking after 10 years and setting the priorities for R2P's implementation in the upcoming

decade (Ban 2015). The number of states which speak in these informal dialogues is constantly increasing:

Figure 2: Number of states participating in the UN's R2P debates from 2009–2015



Source: Author's own diagram

R2P is also addressed as a topic by about 20 states every year during the annual general debates at the beginning of the General Assembly session. Consequently, it has been gaining more attention in the international discourse. Increasingly broad support is also being expressed in statements on the R2P, especially in connection with its first and second pillars. This becomes also apparent in resolutions adopted by the UN Human Rights Council (HRC): three resolutions on the genocide prevention and nine related to country-specific situations refer to R2P.⁷

However, the fact that only about a third of all states take part in the informal talks on the R2P should not be overlooked. If the critical mass of states described above, the criticism of which can cast doubt on the previously described validity of a norm, is taken as a benchmark, it must be admitted that due to limited participation in the dialogues, it cannot be said with certainty how many states are really supporting the set of norms as a whole.

The criticism dating from 2005 and 2009 is still present in the ongoing debate. Controversy flared up again, especially following intervention in Libya by NATO in 2011 (see Section 5.1). The third pillar of the R2P continues to be very controversial. However, criticism is often not clearly formulated in statements by the states. Many states, especially in Latin America and Southeast Asia, continue to take a critical view of R2P. In view of the history of imperial interventions in these regions, every potential backdoor for external interference is regarded with skepticism. Although many countries support the idea of preventing atrocities, R2P is still viewed in the context of the debates over the right to humanitarian intervention dating back to the 1990s, as can be seen in the following quote from a conversation of a South American diplomat with the author in summer 2014:

It is an idea you cannot buy wholesale without qualification. [...] this is an idea that is to be implemented predominantly in the developing world, but not in the US, Israel or France. Almost unconsciously but manifestly, people are talking about the protection of civilians in

⁷ HRC Resolutions 7/25 (2008), 22/22 (2013), and 28/34 (2015) on genocide prevention; and HRC Resolutions 14/14 (2010) on Kyrgyzstan, 14/15 (2010) on Afghanistan, S-15/1 on Libya, and Resolutions 19/22 (2012), 22/24 (2013), 23/1 (2013), 23/26 (2013), 25/23 (2013), and 26/23 (2014) on Syria.

weak and poor countries. From an historical point of view, this is unfair. [...] The most shocking crimes were committed by developed countries. In a way, the idea of R2P is used to whitewash the guilt of the powerful states without them acknowledging this guilt.

The UN Secretariat and other states are seeking to counter such skeptical attitudes with concrete initiatives for implementing R2P and, in this way, to lobby for their interpretation of R2P as a holistic framework with three linked pillars. In addition to the attempt by the Secretary-General to use his reports to steer the debate in the direction of prevention, there have been a few state initiatives for the concrete implementation and institutional anchoring of R2P at the national and regional level, which I will present in Section 6. However, I will first look at the most active players in the international discussion on the R2P, because their initiatives and lobbying were decisive in development of the responsibility to protect.

4.2 The Group of Friends of R2P and NGOs

Even prior to the World Summit, Canada had begun to gather together like-minded states in an informal Group of Friends of the Responsibility to Protect. This was initially led by Canada and Rwanda and now meets under the chairmanship of the Netherlands and Rwanda. Among the approximately 45 members are the European Union and states from all the continents. Representatives of civil society and the UN Secretariat also participate in the group's meetings.⁸ It meets as circumstances require and coordinates its positioning for R2P related debates in UN fora and the annual interactive dialogues on R2P.

In addition to this, it is civil society actors in particular who are trying to advance the R2P debate in the UN context. Following publication of the ICISS report and in the lead-up to the World Summit, Canada sought to establish a transnational network of non-governmental organizations (NGOs) (Banda 2007) and received support from, among others, the World Federalist Movement – Institute for Global Policy (WFM-IGP)⁹ as well as Oxfam International. In cooperation with Canada, WFM-IGP had already organized consultations with other NGOs on R2P in 2002 after publication of the ICISS report, according to statements made by ICRtoP staff members to the author. The result was the R2P Engaging Civil Society (R2P-CS) project, which starting in 2003 strove to advocate R2P on the international agenda under the leadership of WFM-IGP and Oxfam. Even after the World Summit, R2P-CS played an important role by creating a network of NGOs, making information available to the public and actively lobbying the permanent missions in New York (Bellamy 2009: 71–73; ICRtoP 2009). Oxfam also continued to refer to R2P as a framework for campaigns for the protection of civilians in the years following the World Summit. However, ever since the 2011 Libya intervention and given the failure of the UN in Syria, Oxfam no longer sees R2P as a useful tool with regard to calls for more intensive protection of civilians (Cairns 2014).

8 Global Centre for the R2P, International Coalition for the Responsibility to Protect and UN Office of the Special Advisers on the Prevention of Genocide and the Responsibility to Protect.

9 Founded in 1947, the WFM-IGP focuses on peace and security policy issues, UN reform, democracy, environmental protection and protection of civilians. Its headquarters are in New York and it is financed through foundations and contributions from Western governments. See: WFM-IGP 2015.

Globally, two organizations are currently the most influential in the R2P debate: The International Coalition for the Responsibility to Protect (ICRtoP)¹⁰ and the Global Center for the Responsibility to Protect (GCR2P)¹¹, as well as the Asia-Pacific Center for the Responsibility to Protect (AP-R2P)¹² at the regional level. Through regular contact with diplomats in the permanent missions in New York and capital cities of member states, these organizations are able to wield substantial influence on the debate. ICRtoP serves, above all, as a conveyor belt between 89 NGOs, which are mainly active at the local or national level, and the international discourse in New York (ICRtoP 2015). According to various diplomats from the Group of Friends of the R2P, GCR2P functions in particular as a comprehensive information service provider and institutional memory: “I never had so many phone calls on any other dossier I have been working on regarding what to say and what not to say,” said a diplomat from one EU member state. A comprehensive briefing is offered to diplomats who take over that area of responsibility for the first time. In preparations for all debates related to the topic, GCR2P makes contact with the permanent missions and tries to convince these to at least take an official stance and adopt GCR2P’s key messages. By monitoring relevant crisis situations, the organization also influences debate on the application of the third pillar. The AP-R2P influences the debate by means of academic work and attempts at the regional level to persuade people, for example most recently as the secretariat of a high-ranking expert group which formulated recommendations for integrating R2P within the ASEAN Community (see Section 6.4).

The work of the ICRtoP, GCR2P and AP-R2P nongovernmental organizations, which is focused on strengthening the recognition of R2P as a set of obligatory international norms, is supported by the activities of organizations seeking to prevent atrocities and genocide. The Stanley Foundation¹³ is notably active and focuses mainly on organizing dialogue events with UN officials, government employees, diplomats and NGOs, with the goal of strengthening and further developing protection norms, as well as achieving practical implementation of these by exchanging best-practices of implementation (The Stanley Foundation 2015). It also cooperates with the GCR2P, for instance in the organization of workshops for the Focal Point Network coordinated by GCR2P (The Stanley Foundation 2012) (see Section 6.4).

The Auschwitz Institute for Peace and Reconciliation (AIPR), which is based in New York and Poland, focuses on the practical implementation of atrocity prevention without

10 The International Coalition for the Responsibility to Protect (ICRtoP) is the successor organization of R2P-CS and was founded in January 2009 by eight regional and international NGOs.

11 The creation of the Global Center for the Responsibility to Protect (GCR2P) was initiated in 2007 by Gareth Evans and a group of NGOs (International Crisis Group, Human Rights Watch, Oxfam International, WFM-IGP, and Refugees International) and quickly received support from the governments of Australia, Belgium, Canada, the Netherlands, Norway, Rwanda and Great Britain, as well as the Open Society Institute (Evans 2007). GCR2P has an international Board under the leadership of the ICISS co-chairs Gareth Evans and Mohammed Sahnoun.

12 The Asia-Pacific Center for the Responsibility to Protect (AP-R2P) is based at the University of Queensland in Australia and is pursuing the goal of promoting recognition of R2P in Southeast Asia.

13 Headquartered in Muscatine, Iowa, The Stanley Foundation was founded in 1956 with a peace and security orientation. It is a member of the ICRtoP Network.

direct reference to R2P.¹⁴ On one hand, AIPR works directly with governments and regional organizations, such as the AU, on the development and implementation of policies, and on education of government officials, diplomats, soldiers and aid workers in this area, for example within the framework of the Latin American Network for Genocide and Mass Atrocity Prevention (AIPR 2015b) (see Section 6.4). On the other hand, the institute cooperates with the UN Office for Genocide Prevention and R2P in its training program for UN officials and diplomats.

Moreover, the R2P debate is being shaped by a loose group of diplomats, researchers, practitioners and former politicians. Individuals such as Gareth Evans, Edward Luck, Ramesh Thakur, Alex Bellamy, Thomas Weiss or the current US Ambassador to the UN, Samantha Power, and others have had a decisive influence on the development of the R2P through their intellectual contributions as well as through their shifts among various positions in state, civil and international organizations, think tanks and the media (Karlsrud 2013).

The close cooperation among the civil society, committed individuals, government officials and the UN Secretariat have made possible the comparatively rapid development of R2P from an idea to a set of norms that is, nominally at least, becoming more and more firmly embedded in the UN despite substantial skepticism within the community of states.¹⁵ But this is also viewed in a critical manner by states from the south: The GCR2P is primarily funded by Western countries (Evans 2008: 238), and the AP-R2P mainly by the Australian government (AP-R2P 2015). In press statements and events organized by these NGOs, but also in many academic publications, the level of acceptance of R2P among states is being exaggerated in part (for critical comment, see Daase 2013). The example of Southeast Asia shows that the R2P and its components are still highly controversial. Local initiatives are often started by external actors who often narrow R2P down to the first two pillars in order to avoid provoking resistance (Capie 2012).

Nowadays, precisely because of this propagation of R2P, the organizations and individuals that have been referred to play a central role in keeping the topic on the UN's agenda. The civil society pressure on member states and the funds made available for information and education, crisis monitoring, lobbying and conference organization, as well as the atrocity prevention initiatives supported by these organizations are all significant factors for R2P's substantial presence in the international discourse. Exaggeration is one of the strategies utilized by these organizations for strengthening the R2P. This is particularly obvious in the UN Security Council.

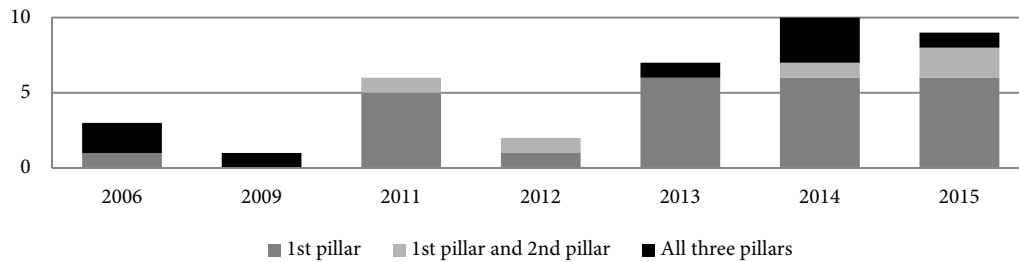
14 Since 2008 the AIPR, which was founded in Auschwitz in 2005 and has been registered in the US since 2007, has offered an educational program and technical support for developing and strengthening global, national and regional policies for the prevention of genocide and atrocities.

15 These can be referred to as so-called "advocacy coalition" (Keck/Sikkink 1998: 1–2), network of different actors with shared values and convictions, pursuing common goals in the political security domain, without presenting themselves as a closed group.

4.3 Prerogative of interpretation and Security Council debates on R2P

Despite widely held reservations in the community of states, affirmative references to the R2P are occurring more and more frequently in resolutions of the Security Council, even four times more frequently since the Libya intervention than in the preceding five years¹⁶.

Figure 3: References to the three pillars of the R2P in Security Council resolutions



Source: Author's own presentation, period covered: September 2005–August 2015.

But the growing number of references to the R2P is not proof of diminishing controversy, even though NGOs often present it in that light. The type of references already makes this obvious: Two-thirds of the 38 total mentions of the R2P by name were related to the non-controversial first pillar – even in cases such as Libya or Ivory Coast, where measures under Chapter VII of the UN Charter were adopted against the government. Eight resolutions (21%) referred to the R2P as a whole, of which two referred directly to concrete situations in a particular country (Sudan 2006, South Sudan 2014). However, not only written references are decisive, but more importantly whether R2P is acknowledged as providing a normative framework for Council action during particular crisis situations.

NGOs such as GCR2P or ICRtoP draw attention to R2P references by diplomats and Security Council resolutions as proof that it and its three pillars exist as norms and that a practice of its application is emerging. A certain exaggeration of the significance of such references is aimed at providing an authoritative interpretation of conceptual references in Security Council resolutions, and thereby at nominally strengthening the R2P. As an NGO staff member says in an interview with the author in summer 2014:

By collecting 'R2P language' in Security Council Resolutions and Member states' statements, [R2P advocates] try to collect evidence for an existing *opinio juris* that R2P exists as a norm.

16 Resolutions referring to R2P between 2005 and the end of February 2011: 1653 (2006) on the Congo and Burundi, 1674 (2006) and 1894 (2009) on the protection of civilians in armed conflicts, 1706 (2006) on Sudan/Darfur, 1970 (2011) and 1973 (2011) on Libya.

Resolutions referring to R2P between March 2011 and August 2015: 1975 (2011) and 2226 (2015) on Ivory Coast; 1996 (2011), 2109 (2013), 2155 (2014), 2187 (2014), 2206 (2015), and 2223 (2015) on South Sudan; 2014 (2011) on Yemen; 2016 (2011), 2040 (2012) and 2095 (2013) on Libya; 2085 (2012), 2100 (2013), 2164 (2014), and 2227 (2015) on Mali; 2093 (2013) on Somalia; 2117 (2013) and 2220 (2015) on small arms and light weapons; 2121 (2013), 2127 (2013), 2134 (2014), 2149 (2014), 2196 (2015), and 2217 (2015) on the Central African Republic; 2139 (2014) and 2165 (2014) on Syria; 2150 (2014) on protection against genocide; 2171 (2014) on prevention of armed conflicts; and 2185 (2014) on the role of the police in peacekeeping missions; as well as 2211 (2015) on the Democratic Republic of the Congo; and 2228 (2015) on Sudan.

This is important, since R2P is a young norm and there is always the danger that that what the member states' governments say is just political theater [...]. It is a tactic of R2P advocates to overstate the Security Council Resolution's language on R2P, to show that R2P matters.

This tactic of exaggeration of the significance of the R2P is used because it is easier to further develop moral norms such as the R2P in the UN context when they have been accepted as part of the UN language and used in resolutions. After all, in contrast to contract law norms, there is no explicitly accepted obligation of the states to adhere to the norms. The World Summit document from 2005 is merely a non-binding resolution of the General Assembly. The goal of R2P norm entrepreneurs such as NGOs and the states in the Group of Friends of the R2P is thus to have all components of the R2P accepted as part of customary international law. However, a prerequisite for this would be universal acceptance of all its components among the community of states and among international law experts, as well as consistent application by the Security Council. R2P norm entrepreneurs are trying to increase social pressure for observing the norm: States should protect their populations and, in extreme cases, the Security Council should intervene. The more possibilities for reference that exist, the greater this pressure becomes and the easier it is to make reference to them in similar cases.

5. Controversial application of R2P by the Security Council

References to R2P and the 2005 World Summit Outcome Document in thematic Security Council resolutions both show that the responsibility to protect is at least referred to as a normative reference framework in the Security Council. However, agreements on concrete applications are only reached with difficulty. Acceptance of the set of norms in the R2P has not yet been achieved, although the controversy is limited to questions of applicability, implementation, and to a lesser degree on validity of the norms constituting the set (see also: Deitelhoff/Zimmermann 2013). The third pillar is intended to include the use of force as the last resort and only in situations in which there are adequate prospects of success with regard to protection of threatened population groups. As a rule, diplomatic pressure, observer missions, imposing sanctions or referral of the case to the International Criminal Court are the preferred forms of reaction as long as they effectively lead to improvement of the situation of the people involved (Hofmann 2013: 10–11). Application of the third pillar is especially controversial when the Security Council applies force to meet its responsibility to protect or when recourse to such measures is called for. This was shown to be the case in 2011 in the disputes over Libya and Syria, but also in the broader context of protection of civilians in armed conflicts by UN Blue Helmet missions, as well as recourse to the International Criminal Court in response to atrocities.

5.1 Intervention in Libya

After the Libyan strongman Muammar al-Gaddafi had demonstrations put down in eastern Libya in February 2011, the situation quickly escalated into an armed uprising (Ulfstein/Christiansen 2013: 159–160). In view of Gaddafi's announcement that he wanted to clear Libya "house by house" of rebellious "rats" and "cockroaches," France and Great Britain

were initially able to win the support of the US and later Russia and China for a Security Council resolution condemning Gaddafi's crackdown. Resolution 1970, which was accepted unanimously on February 26, contains not only a reference to R2P and a weapons embargo and specific sanctions, but also a referral of the case to the International Criminal Court (Adler-Nissen/Pouliot 2014: 11–12). When the resolution failed to have the desired effect, the Gulf Cooperation Council and Arab League called for a no-fly zone. The African states in the UN Security Council (Gabun, Nigeria and South Africa), by contrast, demanded the recognition of a mediation initiative started at the beginning of March by the African Union (AU). Rapid escalation made it possible for France and Great Britain to prevail with their assessment of the situation: In Libya, especially in Benghazi, extremely serious atrocities were to be expected, so that a direct response by the international community was required, even though the AU initiative was welcomed (Adler-Nissen/Pouliot 2014: 11–13). In view of the international pressure, those opposed to the use of force (Brazil, China, India, Russia and Germany) abstained from voting. Russia and China's failure to use their veto was also due to a lack of political interest in Libya. On March 17, 2011 the Security Council passed Resolution 1973 in which it authorized member states to take all necessary measures to protect civilians in Libya and to impose a no-fly zone.

Despite this resolution, it became clear that no consistent international interpretation existed on the actual application of R2P in such a case: the P3 (France, Great Britain, and the US), supported by Bosnia, Lebanon and others, regarded immediate international intervention as the only appropriate response. The AU, by contrast, regarded mediation to be appropriate in order to remind the parties to the conflict of their obligations according to international humanitarian law and to bring about a peaceful resolution of the conflict (Zähringer 2013: 196–197). India and Brazil shared this view and took a skeptical view of recourse to Chapter VII (UN Security Council 2011a).

The disagreement over an appropriate response escalated into a dispute over how the operation should be carried out. The airborne attacks of the P3 on Libya began on March 19 and were supported by other NATO countries as well as Qatar and the UAE. This was immediately criticized by Russia and African countries especially. The latter had planned a mediation mission for March 20 which the intervention coalition forbade because it was said to be too dangerous given the situation. By mid-April 2011 a military stalemate between government forces and rebels had been reached. At this, US President Obama, his French counterpart Sarkozy and British Prime Minister Cameron announced on April 14 that there could be no democratic transition in Libya with Gaddafi (Obama et al. 2011). The continuing efforts of the AU to reach a solution the “African way,” i.e., through mediation, became more and more marginalized (Dembinski/Peters 2015: 12–15; Dembinski/Reinold 2011: 11; Ulfstein/Christiansen 2013: 165). When NATO began to coordinate its air strikes with the rebels as they advanced on areas controlled by Gaddafi, this was no longer covered by Resolution 1973 (Ulfstein/Christiansen 2013: 169). This expansive interpretation of the mandate by the NATO countries and their allies was criticized not only by China and Russia, but also by Brazil, India, South Africa and the AU.

5.2 R2P and the Syrian civil war

The conflict on the appropriate way to respond to atrocities was evident in the debate over how to respond to the Syrian Civil War. During 2011 the Syrian government, under Bashar al-Assad and its loyal military, reacted to more and more widespread protests by using massive violence. In response to this, a Free Syrian Army (FSA) was formed by former members of the armed forces and by opponents of the regime in order to protect demonstrators. Beginning in August 2011, the FSA and other militias began to attack Syrian security forces and a spiral of violence developed into a civil war which continues today (on the Syrian conflict, see: Kirchner 2014). According to a UN Human Rights Council Commission of Inquiry, war crimes and crimes against humanity, also those committed by various militias supporting the opposition, occur on a regular basis (OHCHR 2015).

In August 2011 the Security Council under Indian presidency was able to agree on a joint Presidential Statement on Syria. The continuing violence was condemned and, at the same time, Syria's sovereignty was confirmed (UN Security Council 2011b). An initial draft resolution on Syria in October 2011 was blocked by the vetoes of Russia and China. Brazil, India, Lebanon and South Africa abstained. In the threat of sanctions and further steps, they identified a scenario reminiscent of Libya (UN Security Council 2011c). A Russian resolution initiative in December 2011 never came to a vote (UN Security Council 2012b). Further draft resolutions in February (UN Security Council 2012a) and July 2012 (UN Security Council 2012b) were rejected by Russia and China. Observer missions to Syria undertaken by the Arab League and the UN (Resolution 2032 and 2043 in April 2012) failed due to a lack of cooperation by Syrian government agencies. Two special negotiators, Kofi Annan and his successor Lakdhar Brahimi, resigned from their positions because political resolve on the part of the international community was lacking. Peace conferences in Geneva were also unsuccessful. Not until August 2013, in reaction to a poison gas attack on a suburb of Damascus, was the Security Council able to find an agreement. Resolution 2118 called for the destruction of Syrian chemical weapons. In February 2014, the Security Council finally condemned laying siege to residential areas, the use of barrel bombs and terrorist attacks, and called for the parties to the conflict to permit cross-border humanitarian aid as well as aid in besieged areas (Resolution 2139). Since this showed no effects, in July 2014 the Security Council decided to authorize cross-border access for humanitarian aid by UN partner organizations in Syria, even without the agreement of the Syrian government (Resolution 2165). This authorization was reaffirmed in Resolution 2191 in December 2014. Despite this, millions of people are still cut off from international humanitarian aid to this day.

Only the advance in Iraq and Syria of the ISIS militia, whose proclamation of an Islamic State in the occupied territories and the open threat to kill anybody who refused to convert to their radical variant of Sunni Islam or pay religious taxes, triggered a coordinated international response. At the invitation of the Iraqi government, a multinational coalition led by the US is now carrying out operations against ISIS. The official justification for air strikes against ISIS on Iraqi and Syrian soil is based only on Iraq's right to collective self-defense, not on R2P or a UN mandate, even though the OSAPG condemned atrocities committed by ISIS several times and demanded coordinated regional and international action to ensure the protection of the population.

The consequences of the Arab Spring represented a challenge for the humanitarian protection regime. Events in Libya led to a renewed outbreak along the lines of diplomatic conflict present during the World Summit and also in 2009, i.e., the accusation that the R2P is a cover for a policy of forced regime change. At the same time, in connection with Syria, the accusations of selectivity and lack of a political will emerged again. The long delay for a response to the atrocities in Syria to emerge contrasts starkly with the comparatively rapid mobilization of an international intervention coalition against ISIS. The Syrian war has exposed the limitations of R2P given that the Security Council is not able to agree on a strategy to stop the continuing serious atrocities in Syria because of conflicts of geopolitical interests, and, so far, the people responsible have not had to reckon with later being made to answer for their deeds (Hehir 2012).

But, because these conflicts have to do with the application and implementation of the third pillar of the R2P and not with the general validity of the norms of protection, until now they have not led to a deterioration of R2P as a norm set but to reform initiatives in connection with the third pillar (see Section 6.2).

5.3 R2P and protection of civilians in armed conflicts

In his annual report on the implementation of the R2P in 2012, the Secretary-General referred explicitly to the controversial discussions on the nature of a “timely and decisive response,” and discussed the tools available for implementing R2P under the Charter, as well as their application so far (Ban 2012b). The debate, which, after Libya, had been restricted to the use of force, should be broadened again in this way and, at the same time, give consideration to the strong skepticism about military measures. Consequently, he discussed the relationship of the three pillars of the R2P and rejected the call for strict separation: Prevention, international support and response are linked to each other.

The report sees UN peacekeeping operations as one of the instruments under the R2P but, at the same time, emphasizes that the protection of civilians in armed conflicts is a separate issue with specific goals. Since Blue Helmet missions are always mandated on the basis of agreement of the country where they take place, they are not mostly regarded by UN member states as unjustified interference in the internal affairs of a state. For this reason, the norm of including protection of civilians in the mandate of peacekeeping operations (Protection of Civilians in Armed Conflict – PoC), which was established in 1999, is widely accepted in the community of states.¹⁷ The concern in the UN Secretariat was that a too extended overlapping of PoC mandates with R2P language could once again disrupt the consensus on such mandates, possibly making it more difficult in the future to achieve resolutions and troop contribution commitments in these areas (van Steenberghe 2014: 97–98). For this reason, in 2012 Ban Ki-moon emphasized the differences in the Security Council:

¹⁷ However, the broad acceptance had only limited effect in actual practice on the ground: A UN report from February 2014 concluded that, despite having a mandate, Blue Helmet missions seldom made use of force to protect civilians (UN Office of Internal Oversight Services 2014).

While the two concepts share some common elements, particularly with regard to prevention and support of national authorities in discharging their responsibilities towards civilians, there are fundamental differences. First, the protection of civilians is a legal concept based on international humanitarian, human rights and refugee law, while the responsibility to protect is a political concept, set out in the 2005 World Summit Outcome [...]. Second, there are important differences in their scope. The protection of civilians relates to violations of international humanitarian and human rights law in situations of armed conflict. The responsibility to protect is limited to violations that constitute war crimes or crimes against humanity or that would be considered acts of genocide or ethnic cleansing. Crimes against humanity, genocide and ethnic cleansing may occur in situations that do not meet the threshold of armed conflict (Ban 2012a: 5–6).

Despite this, the connection of mandates to protect civilians with the R2P is still used by advocates of the R2P to promote embedding of the R2P in Security Council resolutions (van Steenberghe 2014: 88–92; Loges 2013: 237–283). The first instance of the R2P being cited in a resolution of the Security Council is in Resolution 1674 (2006) on the protection of civilians, where there is a reference to paragraphs 138 and 139 of the World Summit document, and this is repeated in Resolution 1706 (2006) on the deploying of a UN mission to Darfur (which, however, had no effect). The close relation becomes even clearer in Resolution 1894 (2009) which not only confirms the paragraphs on R2P but also explicitly emphasizes that paragraphs 138 and 139 of the World Summit document are “the relevant provisions of the 2005 World Summit Outcome Document regarding the protection of civilians in armed conflict” (S/RES/1894). Ban Ki-moon also supported this interrelation and had already included the R2P in the normative framework of the agenda on protection of civilians in his report on protection of civilians in 2007 (Ban 2007b: paras. 10–11).

The distinction between the R2P and the protection of civilians is often deliberately neglected by advocates of the R2P. As a result, the states are unable to agree whether and how a resolution refers to the R2P, as shown in the comment of a UN staff member in an interview with the author: “The Council hasn’t talked about R2P for a long time. What some states see as PoC- or IHL-language do other states interpret as references to R2P. Hence, when states negotiate over SC (Security Council) resolutions, there is no consensus on whether or not they are talking about R2P” (paraphrased by the author). The hope of R2P advocates is that, through references in Security Council resolutions on peacekeeping operations, the R2P norms will derive benefit from recognition of the norm of protection of civilians.

5.4 Protection of civilians and regime change: Ivory Coast

A significant overlap of references to the responsibility to protect and the protection of civilians by peacekeeping operations occurred at the beginning of 2011 in reaction to the escalating situation in Ivory Coast. After the elections on November 28, 2010, the president holding office, Laurent Gbagbo, refused to vacate his position in favor of Alassane Outtara, who was internationally recognized as the winner of the election. Instead, he sealed off the borders, expelled foreign media and violently opposed Outtara’s supporters (on the background to this conflict, see: Krempel 2010). Part of the mandate of the UN mission, UNOCI, which has been present in the country since 2004, was protection of civilians, in addition to supervision of the peace treaty agreed upon in 2003 to end the civil war. In addition, French soldiers, who were also in the country, were to provide military support to

UNOCI if it became necessary (Security Council Report 2011: 20). In Resolution 1962 on December 20, 2010, although Russia and China had previously regarded the conflict over the elections as a purely domestic issue of Ivory Coast, the Security Council called for an end to violence, supported the recognition of Ouattara, extended the mandate of UNOCI and authorized a temporary increase in the number of soldiers (Security Council Report 2011: 21). Despite all appeals, the situation continued to escalate. Ouattara's supporters, the Republican Forces of Côte d'Ivoire (RFCI), took up arms against Gbagbo and his supporters. Attempts at mediation and threats to take the matter before the ICC met with no success (Bellamy/Williams 2011: 834). Both parties to the conflict were accused of the massacre of civilians. On March 21, Nigeria criticized the idea that the international community was protecting populations in Libya with an air exclusion zone, while it stood by and watched the killing of innocent people in Ivory Coast (Security Council Report 2011: 23). On March 30, 2011, the Security Council referred in Resolution 1975 to the "responsibility of each State to protect civilians" and confirmed the mandate of UNOCI to adopt all measures necessary for the protection of civilians. Finally, UNOCI and French helicopters engaged Gbagbo's forces, which made it possible for the RFCI to gain control of the capital city within two weeks and arrest Gbagbo.

This use of force blurred the boundaries between humanitarian protection and an enforced regime change, and raised question about interference in internal affairs as well as about the neutrality and impartiality of the UN peacekeepers (Bellamy/Williams 2011: 835). Because the mission was no longer neutral, South Africa was critical of the fact that the UN had exceeded its mandate by recognizing Ouattara and that UNOCI had failed to prevent attacks on civilians. Russia, China and India criticized the actions as an inappropriate taking of sides in an internal conflict (Bellamy/Williams 2011: 835-836; Security Council Report 2011: 23). Ban Ki-moon defended the measures adopted by UNOCI as being necessary to carry out the PoC mandate: At no point did UNOCI coordinate its activities with Ouattara's forces (Security Council Report 2011: 23).

Closely resembling the Libya situation, the diplomatic conflict in this case centered on the implementation of the mandate from the Security Council. The criticism was not directed against the use of force to protect civilians per se, but against the fact that it favored one of the parties to an internal conflict. Even though the criticism quickly faded away, the Ivory Coast case demonstrated the potential for conflict stemming from combining the two overlapping, but nevertheless different, agendas of the R2P and the protection of civilians by Blue Helmets (see also Dembinski/Peters 2015).

5.5 The International Criminal Court and R2P

Short of military measures and apart from sanctions, the International Criminal Court (ICC) is also understood as a Security Council instrument for implementing the R2P. While Russia and the US have not ratified and China not signed or acceded to the Rome Statute – the treaty which established the ICC – all three countries have expressed repeated skepticism about an independent international criminal court. Nonetheless, there have been repeated cases of the Security Council referring cases to the ICC in response to atrocities: the case of the Sudanese region of Darfur in March 2005 and the case of Libya in February

2011. In other cases, which were also discussed internationally in connection with the R2P, the ICC itself instituted proceedings in states parties to the Statute of Rome (Kenya in 2008, Ivory Coast in 2011), or else the opening of proceedings was requested by the country in question itself, such as Uganda in 2004, the Democratic Republic of the Congo in 2004, the Central African Republic in 2007 and 2014, as well as Mali in 2012 (Fehl 2014: 29). However, utilizing the ICC is controversial. Recently, African states have vehemently criticized the court because they perceive the focus on African conflicts as one-sided until now.

Even within the Group of Friends of the R2P, whether and in what way the ICC will be used as an instrument in terms of the R2P is controversial, because the African states are expressing doubts in this matter (Fehl 2014: 14–16). In addition, the question remains of the extent to which referral to the International Criminal Court can serve as an instrument not only for punishing atrocities but for preventing them at all. This and the question of whether, by referring a case to the ICC the Security Council is trying to avoid a necessary but more expensive and more robust procedure still needs to be investigated further (Fehl 2014: 25).

6. Reducing controversy: institutionalization of the R2P

Institutionalizing the R2P in the UN was initially intended to help reduce controversy over it by creating a forum – the annually held informal interactive dialogue on the R2P – as well as appointing a contact person for R2P within the UN system. The Secretary-General Ban Ki-moon, who came into office in 2007, was not afraid to remind the community of states of their commitment and to start institutional implementation (Evans 2008: 50–51).

6.1 UN Office for Genocide Prevention and the R2P

At the end of 2007, Ban Ki-moon named one of the intellectual initiators of the R2P,¹⁸ Francis Deng, as his Special Advisor on the Prevention of Genocide¹⁹ and nominated Columbia University professor Edward Luck as the first Special Adviser on the Responsibility to Protect (Ban 2007a). This incited controversies. The Fifth Committee of the UN General Assembly, which is responsible for budget issues, initially approved no financing for the nomination of an R2P special adviser, and only limited funding for the proposed joint office of the two advisers. In March 2008 in the Fifth Committee, Cuba, Egypt, Morocco, Nicaragua, Pakistan, Sudan and Venezuela once again criticized

18 In the mid-1990s, as Special Adviser to the Secretary-General on Internally Displaced Persons, Francis Deng introduced the idea of sovereignty as responsibility in connection with humanitarian protection for the first time (Deng 1995).

19 The position of Special Adviser on the Prevention of Genocide was created in 2004 and initially established at the (unpaid) Assistant Secretary-General level (Annan 2004). The basis for the nomination was Security Council Resolution 1366 (2001). With the nomination of Deng, the adviser position, previously honorary and on a voluntary basis, was upgraded to a full-time post with the rank of Under-Secretary-General. Edward Luck, on the other hand, became special adviser in the position of an unpaid Assistant Secretary-General.

appointment of the special advisers. The 2005 World Summit Outcome Document 2005 has not been a resolution to adopt a R2P policy, it was argued, and in addition, responsibility for creating posts lay with the General Assembly, not the Secretariat (United Nations 2008).

Despite this, Ban Ki-moon exercised his right to nominate an adviser. The first report of the Secretary-General on the implementation of the Responsibility to Protect in 2009 justified this step as being necessary for the conceptual and practical implementation of his mandate issued by the General Assembly in the World Summit resolution (Ban 2009: 32–33). In 2010 his report on implementation of R2P concentrated entirely on early warning and observation of situations which could result in mass crimes. He emphasized the necessity of exchanging available information among the various UN organizations, regional organizations and member states and adopting an R2P perspective in analyzing such information. The special adviser and his team were to function as coordinators for information gathering and training in this area (Ban 2010). The Fifth Committee did not agree to increase office staffing nor acknowledged prevention of the four international crimes relevant for R2P as the subject of its work until December 2010 (United Nations 2010). In this way, the *Joint Office of the Special Advisers on the Prevention of Genocide and the Responsibility to Protect* (OSAPG) – the UN Office for Genocide Prevention and R2P – was established. In July 2012 the Senegalese diplomat Adama Dieng was named as successor to Francis Deng. In July of the following year, Ban Ki-moon named Oxford Professor Jennifer Welsh as successor to Ed Luck (Ban 2013a).

The issue continues to be the subject of persistent controversy in the Fifth Committee. R2P skeptics make use of the budget debate to demonstrate their rejection of it. Up to now the office barely has ten staff members. Nonetheless, this step toward institutionalization of the R2P in the UN Secretariat was decisive for the course of its development: The yearly reports on the implementation of the R2P discuss reservations felt by member states. The Secretariat strives to limit controversy over the responsibility to protect through the UN General Assembly Informal Interactive Dialogue held in conjunction with yearly reports on R2P.

6.2 Reform initiatives on the third pillar

Following the Libya intervention, the controversial nature of the R2P led to reform initiatives examining the application of the third pillar and the implementation of Security Council mandates, as well as the veto right of the five permanent members of the Security Council.

In November 2011 Brazil reacted to the conflict over the interpretation of the third pillar of the R2P and the perceived misuse of the mandate in Libya with a concept note to the Security Council and the General Assembly in which it introduced a “responsibility while protecting” proposal (Brazil 2011). According to this, military interventions should be the last resort because there is a risk that Security Council mandates could be misused in order to compel regime change and interventions could increase the suffering of the local population. In the build-up to decisions on interventions, a comprehensive analysis of possible consequences should be carried out and the extent of the mandate should be limited in both time and operations. Chronological sequencing of the R2P was also called

for: The three pillars must be understood as following upon each other in a strictly political manner and occur in sequence (Brazil 2011). In addition, Brazil called for a mechanism through which the observation of the terms of the mandate and its implementation in the field could be reviewed. As the ICISS Report had done earlier, Brazil suggested a series of criteria which should guide decision-making on any military action based on the responsibility to protect. The RwP concept did not aim at undermining the R2P, but was an attempt to strengthen it by taking the misgivings of emerging powers into consideration (Stuenkel 2014: 22). This is supported by the fact that Brazil did not reject international reactions under the third pillar and, in this context, even gave authority not only to the Security Council but, in exceptional circumstances, also to the General Assembly to make decisions on the use of military force in accordance with the "Uniting for Peace" Resolution 377 (V) from 1950 which provides for a special emergency session mechanism. It also later relativized the call for sequencing of the three pillars and, in the interactive dialogue of the General Assembly on the R2P in 2012, spoke only of logical and no longer of chronological sequencing (GCR2P 2012). However, other states have insisted on a time sequence.

Western states, especially the US, France and Great Britain, initially treated the concept note as an attack on actions they had taken in Libya. In the interactive dialogue in the General Assembly on the R2P in autumn 2012 France and the US strictly rejected sequencing of the three pillars (GCR2P 2012). Together with Great Britain, they defended NATO's behavior in Libya: They argued that all possible effort to protect human life had been made. Even though force must always remain a measure of last resort, no other behavior was possible. In an informal debate on the concept note in February 2012, Germany emphasized that RwP disproportionately restricted the international community's freedom of action, especially in the case of decisive and timely reactions to crises (Benner 2012: 254). Edward Luck, the UN Special Adviser on the R2P, also took this opportunity to criticize the Brazilian initiative: The core problem was not overhasty action but action taken too late or not at all in the event of serious atrocities (Luck 2012). Russia and China initially criticized Brazil for the statement that in certain situations, international intervention could be required (Benner 2012: 255). In the interactive dialogue on the R2P, however, together with India and Malaysia, they welcomed the Brazilian motion. India even argued that "[i]f R2P is to regain the respect of the international community, it has to be anchored in the concept of RwP" (India 2012). South Africa also strongly supported the Brazilian proposal during the initial discussion of the concept note. In March 2012, analysts close to the Chinese government responded to the RwP initiative with a suggestion of their own entitled "responsible protection" and also called for guidelines from the Security Council on the application of the R2P, as well as supervision of the implementation of Security Council mandates (Garwood-Gowers 2015).

With Brazil's RwP concept and China's Responsible Protection idea, "emerging powers" displayed serious interest in further development of the humanitarian protection regime for the first time. Even though the RwP initiative was initially rejected by Western countries, an attempt at active norm entrepreneurship, which was well received in the global South, can be seen here. Brazil's willingness to negotiate on individual elements of the concept also signaled that they really were interested in further development of the R2P (Benner 2012: 255). Both initiatives sought to take into account misgivings on sovereignty and mistrust of stronger regulation of the norm's implementation. Controversy over application and

implementation of the third pillar thus led to an attempt to more clearly specify what these entailed. The discussion tailed off after Brazil did not call for any further debate on its concept. At the same time, the Chinese proposal was regarded skeptically by many (Garwood-Gowers 2015). However, the Secretary General referred to RWP in his 2015 report on R2P and called for an improvement of decision-making in the Security Council, monitoring of the mandates' implementation, and honoring of PoC standards to achieve "the goal of responsible protection" (Ban 2015: para. 43).

The failure of the Security Council to find a common approach to the conflict in Syria led to a revival of the debate on suspension of the veto in cases of serious atrocities. Labeling themselves the Small Five (S5) – by contrast with the permanent members of the Security Council, the Permanent 5 (P5) – in May 2012, Costa Rica, Jordan, Liechtenstein, Switzerland and Singapore tabled Draft Resolution A/66/L.42/Rev.1 in the General Assembly. This discussed the lack of transparency in the Security Council and called for the P5 to voluntarily waive exercising the veto in cases of serious atrocities. However, this resolution was withdrawn under pressure from the P5 (ICRtoP 2012). The S5 initiative was an expression of a wider debate about reform on the working methods of the Security Council – quite separate from the debate on enlargement (on the debate on enlargement, see Wunderlich 2009). The Accountability, Coherence and Transparency (ACT) Group founded in May 2013 now has 22 member states and focuses on specific and pragmatic reform ideas (Lehmann 2013). Among these is voluntarily setting aside the veto in cases of serious atrocities. France took up this initiative in September 2013 and called upon the P5 to formulate a code of behavior on using the veto (GCR2P 2014). Both ACT and the French initiative were supported by GCR2P both verbally and through lobbying. In an informal exchange of views on the subject organized by France and Mexico in September 2014, broad consensus among the participating states became apparent (GCR2P 2014). However, reservations or even open rejection could be observed among the permanent members: Great Britain showed openness for the proposal, but insisted that all five permanent members should be in the same boat. The US condemned irresponsible use of the veto, but did not explicitly support the initiative. As expected, the proposal was rejected by Russia and China. Both states consider their veto power a guarantee of international stability and a safeguard against overly hasty interventionism by the P3. In order to put more pressure on the P5, the ACT-Group is currently pushing its initiative complementary to the French one. ACT is going to circulate a non-paper in the General-Assembly in 2015 on a "Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes" (ACT 2015). As in August 2015, the initiative is supported by almost 30 states and many civil society organizations. The aim is to persuade all members of the Security Council – permanent and non-permanent members – to become signatories of this code of conduct. The non-paper is thus not just about veto-restraint, "but represents a broader pledge to support timely and decisive Security Council action in such situations" by calling for its signatories to not vote against draft Security Council resolutions on action to end or prevent mass atrocities (ACT 2015). During the 2015 informal interactive dialogue of the General Assembly on R2P, many states referred to such a need for a restraint on the veto (GCR2P 2015b).

As a reform requires amending the UN Charter with the approval of a two-thirds majority of the General Assembly and approval of the P5, these initiatives will probably

have few institutional consequences. Western diplomats explained to the author that instead the debate increases pressure on China and Russia and, in the future, recourse to the veto will be “as uncomfortable as possible” for them. Nonetheless, it is apparent here that the degree of contention related to application or implementation of R2P can create opportunities for reform initiatives.

6.3 Focus on prevention and the “Human Rights Up Front” action plan

A further result of the higher degree of controversy surrounding R2P after Libya was that the UN Secretariat and other actors intensified their efforts in connection with the preventive first and second pillars, responsibility of the state and international support in building capacity, because both enjoy broad approval in the community of states. As a result, this made the original intention of the ICISS report – making prevention the focal point – the object of practical implementation.

In 2011 the Secretary-General’s R2P report had already concentrated on the role of regional organizations in implementing R2P (Ban 2011). As 2011 demonstrated, two key determinants affect whether and how the R2P is applied in cases of conflict: first, the approval of or even calls by (sub-)regional organizations for international intervention in a conflict; second, the form such organizations would prefer for international intervention (peaceful, sanction-based, military...). In addition, regional organizations are decisive in the prevention of atrocities in their region and in the support of individual states.

After the debate on the third pillar in 2012, which was made necessary by Libya, the Secretariat devoted itself entirely to prevention: In his 2013 report, the Secretary-General discussed the primary responsibility of the individual state for the protection of its population against the four crimes, as well as risk factors in their occurrence (Ban 2013b). He discussed various strategies for prevention and made recommendations to member states on the development of social structures which would make them more resistant to atrocities occurring. In 2014, the second pillar of the R2P was the subject of the Secretary-General’s report (Ban 2014). He discussed principles for providing support and possible partnerships in connection with the second pillar, as well as the role of the various UN committees. In addition, in 2014 the OSAPG presented an analytic framework on early recognition of the threat of serious atrocities (UN Office on Genocide Prevention and the Responsibility to Protect 2014). The 2015 Report looks at all three pillars but emphasizes their interconnected character as “guide for action to prevent and halt” atrocities. Five out of six priorities for R2P implementation in the next decade mentioned at the beginning of this report focus on prevention and international assistance (Ban 2015: paras. 54–69).

At the same time, an internal reform process is now underway within the UN. Called “Human Rights Up Front,” the reform process seeks to conceptualize the protection and strengthening of human rights as a core task across the entire UN organization (United Nations 2013). All UN staff members at local sites are required to be alert to signs of human rights violations and to report them. This reform was initiated by a commission established by Ban Ki-moon to investigate the role of the UN in the late phase of the Sri Lankan civil war. In November 2012 this established that the UN had failed in its responsibility to protect the innocent in Sri Lanka (United Nations 2012). In the last five months of the war,

at least 40,000 people died. The withdrawal of UN personnel in September 2008 from the areas where there was fighting left the population with no international observers present and left it exposed to attacks from parties to the conflict. In response to pressure from the government and due to lack of expertise, reports of human rights violations and war crimes were not reported so that humanitarian access to refugees could be maintained (United Nations 2012: 27). Following the publication of the report, a group of experts under the leadership of the Deputy Secretary-General Jan Eliasson worked out the “Human Rights Up Front” initiative in order to prevent such a failure from happening again (United Nations 2013).

Up to the present the UN presented its action plan, which encompasses at least 60 individual measures (Kurtz 2015) in a concept paper, a press conference (see under United Nations 2013) and in a discussion event in New York²⁰ in September 2014. According to UN staff members speaking to the author, the UN Secretariat was for long trying to avoid interference by the General Assembly in this reform of the internal organizational culture. The Political Section, the Office for Genocide Prevention and the R2P, and, in particular, the office of the Secretary-General view “Human Rights up Front” as contributing to the implementation of the R2P (see also Ban 2015: para. 56). The increasing incidence of human rights violations must be understood as a serious warning of possible conflict and potential future atrocities, and the necessity of early diplomatic intervention recognized (United Nations 2013). The UN has initiated an internal training program on Human Rights and early warning indicators for its staff. Moreover, so-called regional quarterly reviews were introduced, where representatives of the UN’s entities for development, political questions, humanitarian affairs, and human rights meet to discuss risk situations and early warning indicators in specific regions (Kurtz 2015). However, this reform of organizational culture has to struggle with several obstacles: rivalry between different UN agencies and differences between them when it comes to operational skills in Human Rights promotion and monitoring, lack of necessary (and sufficient) resources in the Office of the High Commissioner for Human Rights, and skepticism on the side of some member states. Last but not least: Big organizations behave in general rather inertly; changes in organization culture necessitate a rather long effort to take root (Kurtz 2015).

6.4 Institutionalization of the first and second pillars

Initiatives to institutionalize the R2P or parts of R2P are being promoted not only by the UN and member countries in the Group of Friends of the R2P but also by civil society actors. The R2P Focal Point Initiative was already started in September 2010. Initiated by Denmark and Ghana and later supported by Australia and Costa Rica, this aims at persuading states to establish national R2P Focal Points. These would coordinate the topics of R2P and prevention in their own governments as well as networking among countries

20 For video documentation of the event, see: https://youtu.be/8GHptwt_0mU (December 14, 2014).

and with the UN Office for Genocide Prevention and the R2P. By August 2015, 50 states had nominated such an R2P Focal Point (GCR2P 2015).²¹

Because of the continued mistrust of R2P since Libya, norm entrepreneurs are making a greater effort to tie the doctrine to regional social and legal norms, which are already established, without explicitly making use of the concept of the R2P. An example is the Latin American Network for Genocide and Mass Atrocity Prevention. This network was initiated in March 2012 by a group of government officials from Argentina, Chile, Brazil and Panama, who had previously taken part in the genocide prevention courses of the Auschwitz Institute for Peace and Reconciliation (AIPR). The AIPR administratively supports the network as its secretariat and, together with the member states, organizes the curriculum for further education programs in the areas of capacity building and policy development. In addition, it supports member states in developing national prevention mechanisms such as the creation of human rights ombudspersons or of interministerial commissions for the exchange of relevant information among government agencies. Among the members of the network are, with the exception of Cuba, all the Latin American states which openly oppose the R2P (AIPR 2015a).

Based on interviews by the author with diplomats, a reference to genocide and atrocity prevention is said to often have better chances of success than a reference to the R2P, and is also more appropriate for those states who view R2P as the back door for intervention. For this reason, Global Action against Mass Atrocity Crimes (GAAMAC 2015a) is trying to combine the genocide prevention and R2P agendas. In its work, GAAMAC concentrates on forging networks among those in national governments who are responsible for atrocity prevention. Within the framework of a network with the *Genocide Prevention Program* of George Mason University in the US, Argentina, Switzerland and Tanzania had already organized a series of regional forums on prevention of genocide in Argentina (2008), Tanzania (2010), Switzerland (2011) and Cambodia (2013) (GAAMAC 2015a). GAAMAC emerged from a high-level meeting on prevention of atrocities in March 2013 in Dar es Salaam, Tanzania. It is also supported by three leading countries in the R2P Focal Point Initiative (Australia, Costa Rica and Denmark). GAAMAC is a state-led, voluntary, and informal consultative network supported by the OSAPG, AIPR, GCR2P, ICRtoP, the FXB Center for Health and Human Rights at Harvard University, the School of Diplomacy and International Relations at Seton Hall University, and the Stanley Foundation. It is seeking to initiate a movement supported by local, national and regional projects (GAAMAC 2015a). States that wish to develop national strategies for atrocity prevention should find support through exchange of experiences. Civil-Society organizations are also invited to become members. However, apart from an initial meeting in Costa Rica in March 2014, and the publication of a GAAMAC-founding document in July 2015, which lines out the aims of GAAMAC (GAAMAC 2015b), no results are visible as yet. GAAMAC is planning to organize biennial global meetings. Its work is organized by the GAAMAC Steering Group, which consists of the aforementioned states, civil society organizations, and academic

21 Other initiatives focusing on this topic at the subregional level are found here: www.genprev.net/initiatives/ (February 20, 2015).

institutions (GAAMAC 2015b: 5–6). Decisions, even though non-binding to the members, shall be made by consensus, in order to increase trust and solidarity.

Ban Ki-moon welcomed these “peer-network” initiatives in 2015 as powerful mechanisms to exchange lessons learned and best-practices in the field of atrocity prevention (Ban 2015: para. 69). Furthermore, he joined their recommendation for the development of concrete national strategies for atrocity prevention.

The most advanced national institutionalization of and strategy for R2P-related atrocity prevention is to be found in the US even if no mention is made of the R2P.²² In 2012 President Obama created an *Atrocity Prevention Board*, which consists of senior officials from various government agencies. This board is tasked with improving interministerial cooperation in the prevention of atrocities, coordinating information and analyzing critical situations abroad, as well as developing instruments for prevention and response. In addition, the position of Director for War Crimes, Atrocities and Civilian Protection was created on the White House National Security Council (Brockmeier et al. 2013). This serves as the US R2P Focal Point and organizes the institutional implementation of interagency cooperation. As a matter of national interest, the prevention of atrocities has also been incorporated into the national security strategy of the US and is discussed in reports to Congress by the Department of Foreign Affairs, the Defense Department and the Secret Service. Together with the Harvard Kennedy School, the military has also developed a handbook on conducting mass atrocities response operations.

There have also been efforts to establish a R2P policy at the European level. At the beginning of March 2013 a group of experts, which was convened by the Budapest Centre for the International Prevention of Genocide and Mass Atrocities presented a report on existing capabilities, as well as suggestions for improvement in the area of prevention of mass crime by the European Union (Task Force on the EU Prevention of Mass Atrocities 2013). The experts called on the EU to include the R2P in the European security strategy and to declare its support of the R2P in a joint declaration with the European Council, as well as in a resolution of the European Parliament. Through an initiative of the Green party, the European Parliament had already been discussing parts of this since July 2012. In April 2013 it called upon the European Council and the Commission to work out an action plan for implementing and strengthening the R2P and to create a European R2P Focal Point.²³ Until now, however, this has not produced any results.

A comparable initiative for a regionally embedded R2P policy has emerged in Southeast Asia: A high-ranking panel of experts developed recommendations for embedding the R2P in the ASEAN Economic Community which is to come into existence in 2015 (see also High-Level Advisory Panel on the Responsibility to Protect in Southeast Asia 2014). In 2013 Adama Dieng, who was seeking ways to promote acceptance of the R2P in Asia, took the initiative. Following this, the former ASEAN Secretary-General and former Thai Foreign

22 Very little use is made of the concept of the R2P in the discourse, as many people incorrectly assume that under the R2P, the US could be obligated to carry out military interventions which are not in the country's interest (Junk 2014). The concept of atrocity prevention is preferred there.

23 Information on the events in parliament can be found at: <http://bit.ly/1hhrsG1> (August 27, 2015).

Minister Surin Pitsuwan formed a group of experts. Its report was presented in New York on September 9, 2014. Pitsuwan made a deliberate attempt to link the existing regional normative order in which he describes the R2P as a contribution to strengthening national sovereignty. Drawing attention to existing mechanisms of ASEAN in the human rights domain, the authors seek to show ways in which ASEAN can anchor the R2P institutionally in order to improve early warning and prevention of atrocities. This is possible without fundamentally questioning the non-intervention doctrine of ASEAN. The success of this initiative is uncertain. Many states in the region regard their development path as validated because economic development under (military) authoritarianism is being given priority, whereas democracy and protection of human rights has remained a lower priority for a long time. Diplomats from the region also explained to the author that the initiative was criticized because the report was produced with the help of the Australian-financed AP-R2P (for a critical discussion of R2P NGOs in Asia, see: Capie 2012).

The reasoning behind these initiatives is to advance the concrete implementation and institutionalization of the norm of state responsibility for atrocity prevention parallel to declarative commitments, in order to strengthen R2P not just normatively but also practically. In the medium term, this may increase the acceptance and application of the international response norm: According to the thinking of some initiators, once the preventive aspect is embedded, support for international responses to atrocities, including coercive means, might also grow due to the resulting socialization into the contents of the set of R2P norms.

7. The R2P set of norms: accepted and yet controversial

Ten years after the vote in favor of the Responsibility to Protect at the 2005 UN World Summit, the set of norms is experiencing low-to-moderate acceptance in the community of states while at the same time its individual components remain controversial to varying degrees. This is shown by looking at the indicators of norm acceptance summarized here in Figure 4 – presence in the discourse, application of the norms and institutionalization.

Figure 4: Acceptance of R2P in the community of states

		Degree of acceptance of the norm			
		High	Moderate	Low	None
Indicators	Salience of the norm in the discourse	Pillars 1 and 2 of R2P are widely accepted	Pillar 3 is widely criticized because of procedural misgivings; many states only support it with reservations	Many states have not yet stated their position on R2P openly	
	Application of the norm		Selective application of the three pillars of the R2P by the Security Council	No consistent reaction to atrocities, but the R2P provides the normative framework more and more frequently	
	Change in institutions		Initial national and international institutionalization of pillars 1 and 2 (OSAPG, prevention initiatives & Focal Points)	Reform initiatives in connection with Pillar 3 (RwP, restriction of the veto) are receiving support, but not being implemented	

As is clearly shown in the analysis, the controversy in connection with the norms of responsibility to protect is mainly concentrated on issues of the correct application and implementation of the third pillar. The overall validity of the obligations it contains is not openly questioned. All states have acknowledged – at least nominally – that they must protect their populations against genocide, war crimes, crimes against humanity and ethnic cleansing, and that this is an element of their sovereignty. There is also basic agreement that in extreme cases the international community has a responsibility to intervene. However, because the threshold for fulfilling this obligation is interpreted differently, the reactive component of the R2P has hardly been applied.

Conflicts over the responsibility to protect often concern the appropriate form of responding to atrocities: Developing and emerging nations prefer peaceful instruments of response and see dialogue as the best path to conflict resolution. Infringement upon national sovereignty is still a hot issue for many states in the global South. Regime changes imposed by force, as in Libya in 2011, are not accepted. Many states see this as endangering their claim to self-determination, equal development and the formal equality of sovereignty in view of the special role of the five permanent members of the Security Council and the double standard observable there (Brock/Deitelhoff 2012; Hofmann/Wisotzki 2014: 500–504).

As long as initiatives for its further development emerge from the hard-fought conflicts over the implementation of its norms, no danger seems to exist of R2P deteriorating to a meaningless level. Brazil developed the idea of Responsibility while Protecting and China developed the Responsible Protection concept in response to the controversy over NATO exceeding its mandate in the Libyan intervention. Both call for greater transparency and accountability by those intervening with a UN mandate. In view of the blockade of the Security Council in the Syria conflict, various initiatives on restriction of the veto of the five permanent Security Council members were revived shortly afterwards. So far, however, none of the reforms has been considered. Finally, a few smaller states and civil society responded with new prevention initiatives to the intractable stances in the debate on how to appropriately respond to serious atrocities.

However, it could be problematic for the responsibility to protect that a) the reactive component is scarcely ever used and, b) some of the prevention initiatives mentioned language of genocide and atrocity prevention instead of using the concept of R2P. The latter could be a helpful tactic, on one hand, to remove the R2P from the geopolitical conflict of interests of the five permanent Security Council members and, on the other, to avoid the problem of provoking resistance for the sake of resistance on the part of skeptics. However, that could weaken the whole set of norms if the concept of R2P vanished from the discourse as a result.

8. Prospects for further development of the R2P

In the area of early warning and concrete implementation of the prevention of atrocities, the OSAPG and civil society actors such as ICRtoP, GCR2P and AIPR should continue to be supported. Without the support of these actors, most of the initiatives mentioned would no longer exist. But they depend on financial support for their work. Financing can run dry quickly when there is a change in government in an important supporting country. This was demonstrated by Canada rhetorically turning away from the R2P after a conservative government took over in 2006: The concept of the R2P is regarded as an unwelcome legacy from the previous Liberal government, and Canadian diplomats are not to use the word, even if its contents continue to be supported.

At the same time, the strongest supporters need to live up to their own expectations. This involves, for example, establishing an R2P Focal Point, including at the EU level, an analysis of relevant capacities in this area and the development of an atrocity prevention strategy. Targeted measures aimed at prevention of atrocities should be supported in national foreign policy. The US could serve as a frame of reference here (Brockmeier et al. 2013; Junk 2014). For Germany, the action plan for civilian crisis prevention offers important interconnections (Hofmann 2013). The EU can find relevant proposals in the report of the Task Force on the EU Prevention of Mass Atrocities (2013). Impartial evaluation and criticism in assessing situations in which atrocities could occur are also necessary. Western liberal democracies must also be prepared to criticize allies for breaking humanitarian international law or discriminating against certain groups in their own population. This would at least temper the accusation of double standards.

Prevention is a key focus of R2P. However, it also includes the equally important aspect of responding to atrocities. In my opinion, prevention initiatives should be supplemented by concrete steps in order to bolster acceptance of the third pillar of the R2P in the community of states as well as to strengthen the R2P as a complete set of norms. When R2P norm entrepreneurs such as non-governmental organizations and states in the Group of Friends of R2P assert that today the R2P is already widely accepted as well as being well on the way to becoming customary international law, they incorrectly present as the prevailing status quo the desired end-state of norm development (Daase 2013). In this way, however, those who view R2P as an imposition of Western value systems on them feel vindicated. Supporters must seek constructive dialogue with critics. This is the only way it will be possible to establish universal acceptance of the entire set of norms and consistent application of the third pillar by the Security Council over time – prerequisites for permanent strengthening of the R2P.

For this reason, there should be an active discussion of the misgivings of many states in the south concerning sovereignty in the course of institutional reforms. Non-violent measures, such as diplomatic pressure, mediation, observer missions, sanctions or referral of a case to the International Criminal Court, are preferable to the application of military force (Hofmann 2013: 10-11). If these instruments prove ineffective, any military interventions should only be carried out within a narrow scope and under international control. For many developing and emerging nations, the non-intervention norm is the bedrock of the international order, not simply one qualifiable international law principle

among many. In these states, regime change by force in Iraq and Libya stir memories of the colonial past when there was no national self-determination or equality in international law. The Responsibility while Protecting introduced by Brazil offers a good basis here. Because the initiative came from a southern emerging power, it enjoys substantial legitimacy among developing countries. Together with Brazil and other emerging nations, such as India and South Africa, the concept note should be refashioned into a reform proposal regarding the working methods of the Security Council. Through a link to China's Responsible Protection concept, the division in the Security Council on this question might also be overcome. But we should not have any illusions: The Security Council will remain the arena for the great powers to pursue geopolitical conflicts. For that reason, serious atrocities will occur again and again with no reaction from the international community. What is decisive is increasing the social pressure on the P5 to accept their responsibility.

Consequently, as already being discussed in the corridors of the UN, the R2P should be officially added to the agenda of the General Assembly. Unlike the open debates of the Security Council on the protection of civilians, which often end with negotiations on resolutions, the interactive informal dialogues of the General Assembly on the R2P are anything but interactive. If the R2P were on the official agenda and concrete proposals for resolutions were under discussion, supporters and opponents of the R2P would have to participate in a dialogue with each other. After years of informal discussions, a broader consensus might be developed. In 2015, a number of states showed interest in putting R2P on the official Agenda and proposed a General Assembly resolution to reaffirm the international commitment to R2P (GCR2P 2015b). In this way, in view of serious atrocities, the pressure on the P5 to agree on a joint approach might increase.

Finally, it is necessary to emphasize once again that a discursive strengthening of the R2P and its components at the international level does not mean any improvement of the protection of the people threatened by violence and expulsion. For this, further reforms and greater commitment are needed from all countries in the areas of peace building, peacekeeping and peace enforcement as well as crisis prevention and crisis response, but these could not be discussed in this report. Strengthening of the responsibility to protect and its acceptance in member states would create the necessary fertile soil for this. However, the prerequisite for this is non-selective and coherent implementation of all three pillars of R2P as concrete and effective protective measures for populations threatened by atrocities.

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List of abbreviations

ACT	Accountability, Coherence and Transparency Group
AIPR	Auschwitz Institute for Peace and Reconciliation
AP-R2P	Pacific Centre for the Responsibility to Protect
ASEAN	Association of Southeast Asian Nations
AU	The African Union
EU	The European Union
FSA	Free Syrian Army
GAAMAC	Global Action against Mass Atrocity Crimes
GCR2P	Global Centre for the Responsibility to Protect
ICISS	International Commission on Intervention and State Sovereignty
ICRtoP	International Coalition for the Responsibility to Protect
IHL	International Humanitarian Law
ISIS	Islamic State of Iraq and ash-Sham
ICC	International Criminal Court
MFA	Ministry of Foreign Affairs
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NGO	Nongovernmental Organization
OHCHR	Office of the High Commissioner for Human Rights
OSAPG	Joint Office of the Special Advisers on the Prevention of Genocide and the Responsibility to Protect
P3	Refers to the three Western permanent members of the Security Council, United States, France and the United Kingdom; derived from → P5
P5	the five permanent members of the Security Council
PoC	Protection of Civilians in armed conflict
R2P	Responsibility to Protect
R2P-CS	R2P Engaging Civil Society Project
RFCI	Republican Forces of Côte d'Ivoire
RtoP	See → R2P
RwP	Responsibility while Protecting
S5	"Small Five," Costa Rica, Jordan, Liechtenstein, Switzerland and Singapore
SC	Security Council
UAE	United Arab Emirates
UN	United Nations
UNOCI	United Nations Operation in Côte d'Ivoire
WFM-IGP	World Federalist Movement – Institute for Global Policy